

Indemnity Agreement

reasonably incurred by INDEMNITEE in the enforcement of this indemnity contract, and of any sums INDEMNITEE may be required to pay as a result of claims, demands, costs, or judgments with respect to the subject matter of this Agreement, commencing thirty (30) days following the date that sums are actually paid by INDEMNITEE.

10. Binding Effect: Assignment. The terms of this Indemnity Agreement shall bind and inure to the benefit of the parties and their successors and assigns. This Agreement and the respective rights, duties and obligations of the parties hereunder may not be assigned by any of the parties hereto and nothing in this Agreement is intended or shall be construed to give to any other person, firm, or corporation (other than the parties signatory to this Agreement) any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained.

11. Effectiveness: Termination. This Agreement has been executed by the INDEMNITOR in anticipation of the adoption by the INDEMNITEE of the Amending Resolutions in the form and substance as set forth in Exhibit A hereto and shall be effective if, and only if, the Amending Resolutions (a) are duly adopted by all of the parties collectively referred to herein as the INDEMNITEE and (b) become effective within sixty (60) days following the date of this Indemnity Agreement. In the absence of the satisfaction of the conditions referred to in the preceding sentence, this Indemnity Agreement and the rights, duties, and obligations of the parties hereunder shall be null and void ab initio and forthwith shall be of no further force and effect.

12. Execution and Delivery. This Agreement shall be executed and delivered as of the date and year first above written and all copies hereof shall be delivered to and retained by the parties' respective counsel of record as hereinabove named.

Indemnity Agreement

In witness whereof, the parties hereto have executed
this Agreement at Sacramento, California.

SACRAMENTO CABLE TELEVISION,
A general partnership

By: SCRIPPS-HOWARD CABLE COMPANY
OF SACRAMENTO, INC., a
general partner.

Indemnity Agreement

SCRIPPS-HOWARD BROADCASTING COMPANY,
An Ohio Corporation

By: Donald L. Perris
DONALD L. PERRIS
President

SACRAMENTO METROPOLITAN CABLE
TELEVISION COMMISSION, a joint
powers agency,

James K. Karkis

Indemnity Agreement

CITY OF FOLSOM

By: *R. M. Canady*
Mayor

New Exhibits I - VII

EXHIBIT I

FILED

SEP 6 2 32 PM '88

CLERK, U.S. DIST. COURT
EASTERN DIST. OF CALIF.
AT SACRAMENTO
BY DEPUTY

FARROW, SCHILDHAUSE & WILSON
Including a Professional Corporation
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PACIFIC WEST CABLE COMPANY,
a California partnership,

Plaintiff,

v.

CITY OF SACRAMENTO, a municipal
corporation; COUNTY OF
SACRAMENTO, CALIFORNIA;
SACRAMENTO METROPOLITAN CABLE
TELEVISION COMMISSION; and
SACRAMENTO CABLE TELEVISION, a
general partnership,

Defendants.

NO. CIVS-88-985 LKK-JFM

FIRST AMENDED
COMPLAINT FOR VIOLATIONS
OF CIVIL RIGHTS ACT,
SHERMAN ACT, CARTWRIGHT ACT,
AND CALIFORNIA UNFAIR TRADE
PRACTICES ACT, FOR DAMAGES,
AND DECLARATORY AND
INJUNCTIVE RELIEF
(Jury Demanded)

Plaintiff, Pacific West Cable Company, demands a jury
trial, and alleges as follows:

JURISDICTION

1. The First and Second Claims for Relief herein
arise under 42 U.S.C. §1983. Jurisdiction is conferred on this
Court by 28 U.S.C. §§1331, 1343, 2201 and 2202. The Fourth,
Fifth, and Sixth Claims for Relief herein arise under 15 U.S.C.
§§1 and 2, and are brought pursuant to 15 U.S.C. §§15 and 26.

1 Jurisdiction is conferred on this Court by 28 U.S.C. §1337.
2 The Third, Seventh, and Eighth Claims for Relief arise under
3 the laws and Constitution of the State of California.
4 Plaintiff has fulfilled all procedural requirements for these
5 claims. Jurisdiction of this Court over these claims is
6 ancillary and pendent to the Court's jurisdiction over the
7 remaining claims.

8 THE PARTIES

9
10 2. Plaintiff is a general partnership existing under
11 the laws of the State of California and qualified to do
12 business within the State of California.

13 3. Defendant City of Sacramento, California is a
14 municipal corporation organized and existing under the laws of
15 the State of California located in the County of Sacramento.

16 4. Defendant County of Sacramento, California is a
17 California county.

18 5. Defendant Sacramento Metropolitan Cable
19 Television Commission is an entity holding itself out as a
20 joint powers public agency.

21 6. Defendant Sacramento Cable Television is a
22 general partnership existing under the laws of the State of
23 California, currently doing business within the County of
24 Sacramento.

25 THE NATURE OF CABLE TELEVISION

26
27 7. The business of cable television, like that of
28 newspapers and magazines, is to provide subscribers with a

1 mixture of news, information and entertainment. As do
2 newspapers, cable television companies use a portion of their
3 available space to reprint (or retransmit) the communications
4 of others, while at the same time providing some original
5 content. A cable television company is not a public utility,
6 but rather is a recognized member of the media and a First
7 Amendment speaker and publisher.

8 8. The conduct of the business of cable television
9 requires the construction of, among other things, a wire
10 distribution plant either on the jointly or separately owned
11 power and telephone poles, or underground in conduit located in
12 easements owned by said utilities. The provision of such "pole
13 attachment" services is provided by utility companies pursuant

1 consistently thwarted by, among other things, an absolute
2 prohibition upon that activity imposed by defendants City of
3 Sacramento, County of Sacramento, and Sacramento Metropolitan
4 Cable Television Commission. In 1987, that prohibition was
5 adjudicated to be violative of the First Amendment to the
6 United States Constitution. In July, 1987, defendants
7 abandoned that absolute prohibition. However, since July,
8 1987, defendants have continued to act, both separately and
9 jointly, to delay or prevent plaintiff's enjoyment of its
10 Constitutional rights, as is more particularly alleged below.

11 THE FIRST SCHEME--THE MONOPOLY FRANCHISE

12 11. In 1981, defendants City of Sacramento ("City")
13 and County of Sacramento ("County") each enacted identical
14 ordinances which, among other things, prohibited any person

1 franchise contract with the predecessor in interest to
2 defendant Sacramento Cable Television ("SCT"). As part of this
3 contract, as well as pursuant to various other written and oral
4 agreements between them, defendants City, County and Commission
5 on the one hand and defendant SCT on the other hand agreed that
6 SCT would make payments of cash and in kind offerings to City,
7 County and Commission and those they politically favor in
8 exchange for the assistance of City, County and Commission in
9 insuring that no other person would compete with SCT in
10 Sacramento County. On information and belief, these agreements
11 were specifically aimed at plaintiff, who had made both oral
12 and written demands for authorization to build a cable
13 television system in Sacramento County and had filed suit
14 demanding that right as described below, all prior to the date
15 of execution of the franchise contract between defendants. As
16 a result of the above agreements, defendants City, County and
17 Commission refused to permit plaintiff to operate a cable
18 television system in Sacramento County in competition with
19 SCT.

20 13. In September, 1983, plaintiff filed a lawsuit
21 against defendants City and County asserting plaintiff's right
22 to engage in the cable television business in Sacramento County
23 in competition with SCT pursuant to the First Amendment to the
24 United States Constitution and Article I, §2 of the California
25 Constitution. Defendants City and County vigorously opposed
26 plaintiff's claims in that lawsuit until June, 1987, at which
27 time the jury returned responses to special verdicts which
28 undermined virtually all of the factual bases upon which City

1 and County had purported to rely in denying plaintiff a
2 franchise.

3 THE SECOND SCHEME--THE INDIRECT APPROACH

4 14. On or about July 6, 1987, in express reaction to
5 the adverse jury verdicts, defendants City and County enacted
6 identical ordinances entitled, in each case, "Cable Television
7 Licensing Ordinance" (hereafter "Licensing Ordinance").
8 Defendant City enacted this ordinance as Chapter 20.5 of the
9 Sacramento City Code. Defendant County enacted this ordinance
10 as Chapter 5.75 of the Sacramento County Code. A true and
11 correct copy of the Sacramento County Licensing Ordinance is
12 attached hereto as Exhibit 1. Pursuant to this ordinance,
13 desirous cable television companies such as plaintiff can
14 obtain one or more "cable television licenses" only by meeting
15 certain burdensome and unreasonable application requirements.
16 Moreover, the restrictions imposed upon the holders of such
17 licenses are also burdensome and unreasonable. Such licenses
18 are issued and administered by defendant Commission.

19 15. On information and belief, the purpose of
20 defendants City, County and Commission in enacting and
21 administering the Licensing Ordinance was and is to attempt to
22 avoid liability for refusal to permit persons other than
23 defendant SCT to engage in the cable television business within
24 Sacramento County. On information and belief, however,
25 defendants City, County and Commission continue to desire that
26 there be only one cable television company within Sacramento
27 County; desire and intend that no person other than SCT will
28

1 actually build a competing cable television system within the
2 County; and desire that if such a system should be built, it
3 continue in operation for as short a time as possible. On
4 information and belief, defendants City, County and Commission
5 intended to and have enacted the Licensing Ordinance and
6 implemented its terms with the intent and for the purpose of
7 making competition in the Sacramento County cable television
8 market as difficult and expensive as possible short of an
9 outright ban.

10 16. Section 5.75.016 of the Sacramento County
11 Licensing Ordinance and the parallel section of the Sacramento
12 City Licensing Ordinance (hereinafter all references to section
13 numbers will be to the Sacramento County Code; the Sacramento
14 City Code is for all relevant purposes identical) states as
15 follows:

16 Except as otherwise provided by this Chapter,
17 Streets within the County and Cities shall not be
18 occupied by or used for a Cable Television System
19 except under (1) a license issued pursuant to the
20 provisions of this Chapter, or (2) a Franchise
issued pursuant to the provisions of Chapter 5.50
of this Code.

21 No other form of "use" of the streets is burdened by the kind
22 of requirements applied to the conduct of cable television.

23 17. Section 5.75.100 of the Licensing Ordinance
24 requires that all cable television companies wishing to obtain
25 a license to engage in cable television activity must submit an
26 application to defendant Commission. Such an application is
27 required to include eight items set forth in §5.75.102 of the
28 Licensing Ordinance.

1 18. Because §5.75.016 of the Licensing Ordinance
2 prohibited plaintiff from exercising its constitutional right
3 to engage in the cable television business unless and until
4 plaintiff had obtained authorization from defendants, plaintiff
5 submitted an application for a license under protest and
6 without waiver of its rights, beginning in July, 1987.
7 Plaintiff included with its application certain of the items

1 "Corporate Surety Bond" in an amount equal to the total
2 approximate cost of constructing a fully operating cable
3 television distribution plant within the license area, as
4 calculated by a formula contained in those sections. Plaintiff
5 has incurred considerable expense in arranging for and
6 obtaining such bonds. That expense has been totally
7 unnecessary to the proper construction and operation of a cable
8 television system and would not have been incurred but for the
9 requirements of defendants City, County and Commission. Those
10 requirements are unreasonable and unnecessarily burdensome, and
11 the amount of the bonds required is far in excess of any amount
12 which could be reasonably justified as necessary to protect the
13 valid interests, if any, of those defendants.

14 21. Subsection 5.75.102(g) of the Licensing
15 Ordinance requires submission with any application for a
16 license of an "application fee" equal to one quarter of one
17 percent of the principal amount of the Corporate Surety Bond
18 described above. Plaintiff has submitted such amounts under
19 protest. The application fee required by the Licensing
20 Ordinance is far in excess of the reasonable amount necessary
21 to cover the actual costs incurred by defendants in processing
22 plaintiff's applications.

23 22. In or around December, 1987, defendants City,
24 County and Commission entered into a further agreement with
25 defendant SCT. As part of such agreement, SCT paid to City,
26 County and Commission a large sum of money in exchange for
27 which SCT is permitted to conduct its cable television business
28 on substantially more favorable terms and subject to fewer

1 restrictions than City, County and Commission are imposing on
2 plaintiff under the terms of the Licensing Ordinance. Some,
3 but not all, of these more favorable terms are found in pages
4 5-6 and 8-10 of a document entitled "Memorandum of
5 Understanding" which is attached hereto as Exhibit 3. These
6 more favorable terms are afforded to SCT despite the fact that
7 the memorandum of understanding itself acknowledges (page 10,
8 par. 2) that SCT and plaintiff are similarly situated for
9 purposes of equal protection analysis. On information and
10 belief, the intent of all defendants in obtaining for SCT more
11 favorable treatment than is provided to plaintiff or other
12 licensees is to further defendants' desire to obtain indirectly
13 and secretly what it formerly sought to achieve directly and
14 openly until challenged through judicial proceedings--the
15 existence of SCT as the one and only cable television operator
16 in Sacramento County, able to charge monopoly prices and to
17 share the proceeds thereof with City, County and Commission.

1 constitutionally be applied to restrain and limit plaintiff's
2 activities. Plaintiff claims to the contrary.

3
4 FIRST CLAIM FOR RELIEF
(Declaratory Relief, Damages--License Restrictions)
(Defendants City, County and Commission)

5 25. Plaintiff incorporates herein by reference the
6 allegations of paragraphs 1 through 24 above, and further
7 alleges as follows.

8 26. This claim for relief seeks a declaration as to
9 the applicability, constitutionality and legality of each of
10 the provisions of the Licensing Ordinance which are set forth
11 in the next paragraph, and damages for their wrongful
12 imposition on plaintiff. This declaration is sought on the
13 grounds that there is an actual controversy between the parties
14 as to the propriety of each of those provisions under the
15 First, Fourth, Fifth and Fourteenth Amendments to the United
16 States Constitution; Article I, §1, Article I, §2, Article I,
17 §7, Article I, §13 and Article I, §19 of the California
18 Constitution; the Cable Communications Policy Act of 1984 (47
19 U.S.C. §521 et seq.); and/or Cal.Pub.Util.C. §767.5.

20 27. Plaintiff seeks a declaration as to each of the
21 following provisions of the Licensing Ordinance:

- 22 a. Section 5.75.012 (prohibition upon all
23 activities not protected by constitution's);
24 b. Section 5.75.014(f) (definition of "gross
25 revenues");
26 c. Section 5.75.016 (license or franchise
27 required);
28

- d. Section 5.75.026 (communications with regulatory agencies);
- e. Section 5.75.028 (limitation of actions);
- f. Section 5.75.030 (possessory interest taxation);
- g. Section 5.75.100 (application for license);
- h. Section 5.75.102 (contents of application);
- i. Section 5.75.104 (issuance of licenses);
- j. Section 5.75.106 (term of license);
- k. Section 5.75.106 (universal service);
- l. Section 5.75.108 (license area);
- m. Section 5.75.200 (general capability);
- n. Section 5.75.202 (stand-by power);
- o. Section 5.75.204 (override capability);
- p. Section 5.76.206 (interconnection);
- q. Section 5.75.208 (plans and specifications);
- r. Section 5.75.210(a),(c),(d),(f) and (g) (technical standards);
- s. Section 5.75.212 (public, educational and governmental access);
- t. Section 5.75.216 (availability of access facilities);
- u. Section 5.75.304 (duty to report);
- v. Section 5.75.306 (completion);
- w. Section 5.75.308 (excuses for violations);
- x. Section 5.75.318 (erection of poles);
- y. Section 5.75.400 (system ownership);
- z. Section 5.75.402 (services);

- 1 aa. Section 5.75.408 (maintenance and repair);
2 bb. Section 5.75.412(d),(e),(f) and (g)
3 (privacy);
4 cc. Section 5.75.414 (standards for system
5 quality);
6 dd. Section 5.75.500-5.75.508 (license fees);
7 ee. Section 5.75.510 (auditing and financial
8 records);
9 ff. Section 5.75.600 (performance bonds);
10 gg. Section 5.75.602 (indemnification by
11 licensee);
12 hh. Section 5.75.604 (licensee insurance);
13 ii. Section 5.75.606 (waiver of subrogation);
14 jj. Section 5.75.700 (transfers prohibited);
15 kk. Section 5.75.702 (crimes);
16 ll. Section 5.75.712 (non-enforcement).

17 28. As a proximate result of defendants' actions and
18 requirements as described above, plaintiff has been and will
19 continue to be damaged in substantial amounts not yet fully
20 determined, but in excess of the minimum jurisdictional amount
21 of this Court.

22 WHEREFORE, plaintiff prays for relief as hereinafter
23 set forth;

24 ///

25 ///

26 ///

27 ///

28

SECOND CLAIM FOR RELIEF
(Federal Civil Rights)
(All Defendants)

29. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 28 above, and further alleges as follows.

30. This claim for relief seeks to redress the deprivation, under color of law, of rights secured to plaintiff by the constitution and laws of the United States.

31. On information and belief, beginning at sometime after defendants City, County and Commission acted to pass the ordinance referred to in paragraph 14 hereof, defendants City, County and Commission and defendant SCT formed a common plan, scheme and design to render competition to SCT in Sacramento County difficult or impossible. On information and belief, defendants determined to put potential competitors of SCT, such as plaintiff, at a substantial potential disadvantage by various means at defendants' disposal, including various actions aimed at making plaintiff's business costs artificially high, imposing unnecessary administrative and regulatory burdens upon plaintiff, and delaying plaintiff's ability to operate its system. Defendants, and each of them, have taken numerous overt acts in furtherance of this plan, scheme and design, including but not limited to all of the following:

a. Defendant SCT agreed to pay and did pay defendant City, County and Commission large sums of money in exchange for changes in SCT's contractual obligations for the purpose of permitting SCT to act anticompetitively toward plaintiff, through, among other things, discriminatory and

1 predatory pricing, and expansion of monopoly power to new areas.

2 b. Defendants City, County and Commission
3 included in their Licensing Ordinances burdensome, unreasonable
4 and unnecessary provisions which all cable television companies
5 in Sacramento County except SCT must comply with in order to
6 engage in cable television activity.

7 c. Defendants City, County and Commission have

1 include, but are not limited to, the installation of its wires
2 unnecessarily high or low on utility poles and alternating
3 between high and low locations on consecutive poles.

4 g. Defendants City and County are charging
5 franchise fees to plaintiff, among others, which are in excess
6 of any constitutional and legitimate costs of regulating
7 plaintiff.

8 32. As described above, under color of the Licensing
9 Ordinances defendants have imposed upon plaintiff numerous
10 restrictions, and threatened to impose other restrictions in
11 the future, and have extracted and will extract numerous
12 substantial payments of money and things of value from
13 plaintiff all in violation of plaintiff's federal civil rights.

14 33. Each act taken by defendants, and each of them,
15 has been taken under color of governmental authority and
16 pursuant to an official policy or custom of such authority.

17 34. The actions of defendants as alleged above,
18 presently deprive and imminently threaten further to deprive
19 plaintiff of rights guaranteed by the First, Fourth, Fifth and
20 Fourteenth Amendments to the United States Constitution, and
21 the Cable Communications Policy Act of 1984, 47 U.S.C. §521 et
22 seq.

23 35. Plaintiff has no adequate legal, administrative
24 or other remedy by which to prevent or minimize the continuing
25 irreparable harm to its federal rights. Unless the defendants
26 are enjoined, plaintiff will continue to suffer great and
27 irreparable harm as aforesaid.
28

1 36. As a proximate result of defendants' actions and
2 requirements as described above, plaintiff has been and will
3 continue to be damaged in substantial amounts not yet fully
4 determined, but in excess of the minimum jurisdictional amount
5 of this Court.

6 WHEREFORE, plaintiff prays for relief as hereinafter
7 set forth.

8 THIRD CLAIM FOR RELIEF
9 (State Civil Rights)
10 (All Defendants)

11 37. Plaintiff incorporates herein by reference the
12 allegations of paragraphs 1 through 36 above, and further
13 alleges as follows.

14 38. This claim is asserted against defendants, and
15 each of them, under the constitution and laws of the State of
16 California.

17 39. Defendants' actions have denied and threaten to
18 continue to deny plaintiff rights guaranteed to it under the
19 California Constitution, Article I, §1, Article I, §2, Article
20 I, §7, Article I, §13, and Article I, §19, as well as rights
21 accruing to plaintiff pursuant to Cal.Pub.Util.C. §767.5.

22 40. Plaintiff has no adequate legal, administrative
23 or other remedy by which to prevent or minimize the continuing
24 irreparable harm to its rights. Unless the defendants are
enjoined from committing the above described actions, plaintiff

1 will continue to be damaged in substantial amounts as yet
2 undetermined, but in excess of the minimum jurisdictional
3 amount of this Court.

WHEREFORE plaintiff prays for relief as hereinafter

1 and extend its monopoly power as above described.

2 48. The overt acts committed by SCT in furtherance of
3 the attempts to monopolize and maintenance of monopoly
4 described above, include but are not limited to all of the
5 following:

6 a. SCT has used a claimed right to control the
7 movement of its wires to make room for plaintiff's system on
8 the utility poles to delay plaintiff's ability to begin
9 competing with SCT, and to harass plaintiff and artificially
10 increase plaintiff's costs of doing business;

11 b. SCT has demanded, without good faith
12 business justification, that its own employees relocate SCT
13 wires, at plaintiff's expense and with charges set by SCT,
14 rather than permitting a neutral contractor to do so at fairly
15 negotiated rates. even though the telephone utility had not